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09/871,697	06/04/2001	Shinji Yoko	024607-5002	9086
9629 7590 06/15/2010 MORGAN LEWIS & BOCKIUS LLP 1111 PENNSYLVANIA AVENUE NW WASHINGTON, DC 20004				
EXAMINER				
BOYCE, ANDRE D				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/871,697  
Filing Date: June 04, 2001  
Appellant(s): YOKO ET AL.

\_\_\_\_\_  
Robert T. Burns, Jr.  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 4/03/09 appealing from the Office action mailed 10/06/08.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**NEW GROUND(S) OF REJECTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim(s) 24 and 25 are rejected under 35 USC § 112, ¶ 2, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim(s) recites/recite the following means (or step) plus function limitation:

Claim 24 includes limitations for: means for storing on four axes simultaneously an initial target, including at least a sales goal and an action plan, in a database in the form of a multi-dimensional matrix consisting of four inter-related axes of a product, a territory, an application and an account, wherein each of the four axes communicate both horizontally and vertically with each of the other axes; means for prompting to input an actual performance including actual money or volume of sales performance and actual sales activities corresponding to said initial target by using a local and/or remote terminal; means for managing an achievement of the target by reading the said initial target and said actual performance and arbitrarily selecting any one or more from said four axes simultaneously; and means for displaying a table of said initial target and/or said actual performance along the arbitrarily and simultaneously selected axis or axes on the local and/or remote terminal, wherein said initial target is ranked and sorted by value of the initial target.

Claim 25 contain limitations similar to those listed above for claim 24, and the additional limitation for “means for managing a sales achievement.....terminal”.

These limitations invoke 35 USC § 112, ¶ 6 because it meets the 3-prong analysis set forth in MPEP 2181 as it recites the phrase “means for” or “step for” (or appellant identifies the

limitation as a means (or step) plus function limitation in the appeal brief) and the phrase is modified by functional language and it is not modified by sufficient structure, material, or acts for performing the recited function. Also see *Altiris Inc. v. Semantec Corp.*, 318 F.3d 1363, 1375 (Fed. Cir. 2003). 35 USC § 112, ¶ 6, requires such claim to be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof. “If one employs means plus function language in a claim, one must set forth in the specification an adequate disclosure showing what is meant by that language. If an applicant fails to set forth an adequate disclosure, the applicant has in effect failed to particularly point out and distinctly claim the invention as required by the second paragraph of section § 112.” *In re Donaldson Co.*, 16 F.3d 1189, 1195, 29 USPQ 1845, 1850 (Fed. Cir. 1994)(in banc.). For a computer-implemented means-plus-function claim limitation that invokes 35 USC § 112, ¶ 6, the corresponding structure is required to be more than simply a general purpose computer. *Aristocrat Technologies, Inc. v. International Game Technology*, 521 F.3d 1328, 1333, 86 USPQ2d 1235, 1239-40 (Fed. Cir. 2008). The corresponding structure for a computer-implemented function must include the algorithm as well as the general purpose computer. *WMS Gaming, Inc. v. International Game Technology*, 184 F.3d 1339, 51 USPQ2d 1385 (Fed. Cir. 1999). The written description must at least disclose the algorithm that transforms the general purpose microprocessor to a special purpose computer programmed to perform the claimed function. *Aristocrat*, 521 F.3d at 1338, 86 USPQ2d at 1242.

In the instant application, the following portions of the specification and drawings may appear to describe the corresponding structure for performing the claimed function:

Specification [0008], [0083-0084]. Fig. 3.

However, the specification and drawings do not disclose sufficient corresponding structure, material or acts for performing the claimed function. Claim 24 includes limitation for: “means for storing...axes”; “means for prompting...terminal”; “means for managing...simultaneously”; and “means for displaying a table...target. Claim 25 includes similar limitations and an additional limitation for “means for managing a sales achievement.....terminal”. The Specification does not set forth any software instructions or algorithms for performing these respective functions. As such, the Appellants have failed to adequately describe sufficient structure for performing the functions claimed.

#### **(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

#### **(8) Evidence Relied Upon**

USPN 6,895,403	Cardwell et al	May 2005
Selling by Objective	Institutional Distribution	May 1984

#### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

#### **NEW GROUND(S) OF REJECTION**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim(s) 24 and 25 are rejected under 35 USC § 112, ¶ 2, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim(s) recites/recite the following means (or step) plus function limitation:

Claim 24 includes limitations for: means for storing on four axes simultaneously an initial target, including at least a sales goal and an action plan, in a database in the form of a multi-dimensional matrix consisting of four inter-related axes of a product, a territory, an application and an account, wherein each of the four axes communicate both horizontally and vertically with each of the other axes; means for prompting to input an actual performance including actual money or volume of sales performance and actual sales activities corresponding to said initial target by using a local and/or remote terminal; means for managing an achievement of the target by reading the said initial target and said actual performance and arbitrarily selecting any one or more from said four axes simultaneously; and means for displaying a table of said initial target and/or said actual performance along the arbitrarily and simultaneously selected axis or axes on the local and/or remote terminal, wherein said initial target is ranked and sorted by value of the initial target.

Claim 25 contain limitations similar to those listed above for claim 24, and the additional limitation for “means for managing a sales achievement.....terminal”.

These limitations invoke 35 USC § 112, ¶ 6 because it meets the 3-prong analysis set forth in MPEP 2181 as it recites the phrase “means for” or “step for” (or appellant identifies the limitation as a means (or step) plus function limitation in the appeal brief) and the phrase is modified by functional language and it is not modified by sufficient structure, material, or acts for performing the recited function. Also see *Altiris Inc. v. Semantec Corp.*, 318 F.3d 1363,

1375 (Fed. Cir. 2003). 35 USC § 112, ¶ 6, requires such claim to be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof. “If one employs means plus function language in a claim, one must set forth in the specification an adequate disclosure showing what is meant by that language. If an applicant fails to set forth an adequate disclosure, the applicant has in effect failed to particularly point out and distinctly claim the invention as required by the second paragraph of section § 112.” *In re Donaldson Co.*, 16 F.3d 1189, 1195, 29 USPQ 1845, 1850 (Fed. Cir. 1994)(in banc.). For a computer-implemented means-plus-function claim limitation that invokes 35 USC § 112, ¶ 6, the corresponding structure is required to be more than simply a general purpose computer. *Aristocrat Technologies, Inc. v. International Game Technology*, 521 F.3d 1328, 1333, 86 USPQ2d 1235, 1239-40 (Fed. Cir. 2008). The corresponding structure for a computer-implemented function must include the algorithm as well as the general purpose computer. *WMS Gaming, Inc. v. International Game Technology*, 184 F.3d 1339, 51 USPQ2d 1385 (Fed. Cir. 1999). The written description must at least disclose the algorithm that transforms the general purpose microprocessor to a special purpose computer programmed to perform the claimed function. *Aristocrat*, 521 F.3d at 1338, 86 USPQ2d at 1242.

In the instant application, the following portions of the specification and drawings may appear to describe the corresponding structure for performing the claimed function:  
Specification [0008], [0083-0084]. Fig. 3.

However, the specification and drawings do not disclose sufficient corresponding structure, material or acts for performing the claimed function. Claim 24 includes limitation for: “means for storing....axes”; “means for prompting....terminal”; “means for



managing....simultaneously”; and “means for displaying a table...target. Claim 25 includes similar limitations and an additional limitation for “means for managing a sales achievement....terminal”. The Specification does not set forth any software instructions or algorithms for performing these respective functions. As such, the Appellants have failed to adequately describe sufficient structure for performing the functions claimed.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cardwell et al (USPN 6,895,403), in view of Selling by Objective (May 1984).

As per claim 30, Cardwell et al disclose a method for managing corporate objectives in multi-dimensional matrix (i.e., determination of the business purpose and strategy for the organization, including multiple critical measures axes, column 5, lines 19-23 and figure 1), comprising the steps of storing on four axes simultaneously an initial target, including at least a sales goal and an action plan, in a database in the form of a multi-dimensional matrix, wherein each of the axes communicate both horizontally and vertically with each of the other axes (i.e., allowing all levels of an organization to be aware of the broad goals and priorities of the organization, the projects on which the teams are working on, as well as what each

individual is working on, and what the priority for each task is, and the relational database used in the inventive process allows information to be shared throughout all levels of the organization, column 11, lines 62-67), prompting to input an actual performance including actual money or volume of sales performance and actual sales activities corresponding to said initial target for a predetermined term till predetermined due date by using a local and/or remote terminal (i.e., entering of critical measures, including current monthly net income in comparison to expectations, figure 1, and due dates of deliverables, figure 2); receiving said actual performance; storing said received actual performance in the database on four axes simultaneously (i.e., updating informational database, column 2, lines 65-67); managing an achievement of the target by reading the said initial target and said actual performance (i.e., each measure is tracked indicating progress, column 6, lines 46-48) and arbitrarily selecting any one or more from said four axes simultaneously (i.e., critical measures are determined based upon executives determination of the business priorities, column 6, lines 39-42); and displaying a table of said initial target and/or said actual performance along the arbitrarily and simultaneously selected axis or axes on the local and/or remote terminal, wherein said initial target is ranked and sorted by value of the initial target (i.e., selection of an account, i.e., Market Share in Garfield County, including a table of critical measures, wherein performance results are ranked based upon current, minimum, meets and exceeds data, figure 1).

Cardwell et al does not explicitly disclose storing on four axes simultaneously an initial target, including at least a sales goal and an action plan, in a database in the form of a multi-dimensional matrix consisting of four inter-related axes of a product, a territory, an

application and an account. Selling by Objective (SBO) discloses an action plan based upon objectives and sub-objectives (§ 24-25), wherein you can determine and manage the objectives based on considerations (i.e., inter-related axes) including territory, product line, type of customer (i.e., application), and by firm (i.e., account, ¶ 21-23). Both Cardwell et al and SBO are concerned with an action plan based upon objectives, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a product, a territory, an application, and an account in Cardwell et al, as seen in SBO, as an effective first step in determining your objectives, as disclosed by SBO (§ 20).

As per claim 31, Cardwell et al disclose a method for managing corporate objectives in multi-dimensional matrix (i.e., determination of the business purpose and strategy for the organization, including multiple critical measures axes, column 5, lines 19-23 and figure 1), comprising the steps of storing on four axes simultaneously an initial target, including at least a sales goal and an action plan, in a database in the form of a multi-dimensional matrix, wherein each of the axes communicate both horizontally and vertically with each of the other axes (i.e., allowing all levels of an organization to be aware of the broad goals and priorities of the organization, the projects on which the teams are working on, as well as what each individual is working on, and what the priority for each task is, and the relational database used in the inventive process allows information to be shared throughout all levels of the organization, column 11, lines 62-67), prompting to input an actual performance including actual money or volume of sales performance and actual sales activities corresponding to said initial target for a predetermined term till predetermined due date by using a local and/or remote terminal (i.e., entering of critical measures, including current monthly net income in

comparison to expectations, figure 1, and due dates of deliverables, figure 2); receiving said actual performance; storing said received actual performance in the database on four axes simultaneously (i.e., updating informational database, column 2, lines 65-67); managing an achievement of the target by reading the said initial target and said actual performance (i.e., each measure is tracked indicating progress, column 6, lines 46-48) and arbitrarily selecting any one or more from said four axes simultaneously (i.e., critical measures are determined based upon executives determination of the business priorities, column 6, lines 39-42); and displaying a table of said initial target and/or said actual performance along the arbitrarily and simultaneously selected axis or axes on the local and/or remote terminal, wherein said initial target is ranked and sorted by value of the initial target (i.e., selection of an account, i.e., Market Share in Garfield County, including a table of critical measures, wherein performance results are ranked based upon current, minimum, meets and exceeds data, figure 1), and managing a sales achievement by comparing said initial target with said actual performance corresponding to said initial target and based on this comparison sorting said initial target and/or said actual performance, sorted by at least one threshold having at least one step, and displaying them on the local or remote terminal (i.e., each measure is tracked, wherein the current is compared to minimum, meets and exceeds, so executives can quickly track the issues, column 6, lines 47-50 and figure 1).

Cardwell et al does not explicitly disclose storing on four axes simultaneously an initial target, including at least a sales goal and an action plan, in a database in the form of a multi-dimensional matrix consisting of four inter-related axes of a product, a territory, an application and an account. Selling by Objective (SBO) discloses an action plan based upon

objectives and sub-objectives (§ 24-25), wherein you can determine and manage the objectives based on considerations (i.e., inter-related axes) including territory, product line, type of customer (i.e., application), and by firm (i.e., account, §§ 21-23). Both Cardwell et al and SBO are concerned with an action plan based upon objectives, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a product, a territory, an application, and an account in Cardwell et al, as seen in SBO, as an effective first step in determining your objectives, as disclosed by SBO (§ 20).

As per claim 32, Cardwell et al disclose the step of managing a sales achievement further comprises; changing a display style of said initial target and/or said actual performance based on said comparison and displaying them on the local and/or remote terminal (i.e., financial performance results, including current, minimum, meets, and exceeds, Example A and figure 1).

As per claim 33, neither Cardwell et al nor SBO explicitly disclose said actual performance further comprises a progress code, expressing progress status, including at least 'on the schedule', 'behind the schedule' and 'completed', and managing progress by displaying the said actual performance based on the said progress code and/or any one of said four axes on the local and/or remote terminal. However, this terminology is old and well known in project management, therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include expressing progress status, including at least 'on the schedule', 'behind the schedule' and 'completed' in Cardwell et al, as an effective means of determining performance status.

As per claims 34 and 35, Cardwell et al disclose altering said initial target based on said actual performance and/or business trend (i.e., executive can view the organizational chart and decide to change one of the business priorities, column 12, lines 33-41).

Claims 24-29 are rejected based upon the rejection of claims 30-35, respectively, since they are the system claims corresponding to the method claims.

#### **(10) Response to Argument**

In the Appeal Brief, Appellant argues that 1) neither Cardwell nor SBO teach or suggest a multi-dimensional matrix, 2) neither Cardwell nor SBO teach or suggest four inter-related axes that communicate horizontally and vertically with each of the other four axes, and 3) neither Cardwell nor SBO teach arbitrarily and simultaneously selected axes.

With respect to Argument 1, the Examiner respectfully disagrees. Cardwell et al disclose determination of the business purpose and strategy for the organization, including multiple critical measures axes (column 5, lines 19-23 and figure 1). Moreover, Cardwell et al disclose providing multiple layers of an organization, including creation of a data table with multiple objectives and goals (column 2, lines 20-25), wherein a plurality of informational databases may be created with open access to and between the plurality of databases (column 2, lines 37-45). In addition, Cardwell et al disclose allowing all levels of an organization to be aware of the broad goals and priorities of the organization, the projects on which the teams are working on, as well as what each individual is working on, and what the priority for each task is, and the relational database used in the inventive process allows information

to be shared throughout all levels of the organization (column 11, lines 62-67). As such, Cardwell et al indeed disclose a multi-dimensional matrix.

With respect to Argument 2, the Examiner respectfully disagrees. First, the Examiner notes that as seen in Appellant's specification (¶¶ 0079-0086), the axes are merely selected, manipulated, and displayed from a database. Similarly, Cardwell et al disclose allowing all levels of an organization to be aware of the broad goals and priorities of the organization, the projects on which the teams are working on, as well as what each individual is working on, and what the priority for each task is, and the relational database used in the inventive process allows information to be shared throughout all levels of the organization (column 11, lines 62-67). In addition, figures 1-3 include selection of an account, i.e., Market Share in Garfield County, including inter alia, a table of business priorities, critical measures, deliverables, and business priorities.

With respect to Argument 3, the Examiner respectfully disagrees. First, Cardwell et al disclose the determination of the scope at upper management and critical measures determined based upon executives' determination of the business priorities (column 6, lines 26-42). Moreover, Cardwell et al disclose the critical performance measures are a list of targets that need to be achieved, including subcategories, wherein each measure and submeasure is tracked (column 6, lines 42-51). In addition, figures 1-3 include selection of an account, i.e., Market Share in Garfield County, including inter alia, a table of business priorities, critical measures, deliverables, and business priorities. As such, Cardwell et al indeed disclose arbitrarily selecting any one or more from said four axes simultaneously.

### **11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent



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applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

/Andre Boyce/

Primary Examiner, Art Unit 3623

**A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:**

/Wynn W. Coggins/

Director, TC 3600

Conferees:

Vincent Millin /bvb/ for

Appeals Practice Specialist

Beth Boswell, Supervisory Patent Examiner /bvb/

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